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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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Luann Gould,	:	
	:	
Plaintiff,	:	05 CV 11118 (PBS)
	:	
– against –	:	
	:	AFFIRMATION OF ROBERT R.
Lucent Technologies, Inc.,	:	THOMAS IN SUPPORT OF
	:	PLAINTIFF’S MOTION IN
	:	OPPOSITION TO SUMMARY
Defendant.	:	JUDGMENT
-----	x	<i>Part II</i>

Robert R. Thomas, an attorney duly licensed to practice law in the Commonwealth of Massachusetts, affirms under penalty of perjury as follows:

1. I am an attorney of Harvey, Kleger & Thomas, counsel to Luann Gould (“Gould”). This affirmation is submitted in support of Gould’s Motion in Opposition to Summary Judgment. All documents attached are true and correct copies of the originals.
2. Pertinent pages from the Deposition Transcript of Luann Gould are annexed here as Exhibit A.
3. Pertinent pages from the Deposition Transcript of Pyong Deletis are annexed here as Exhibit B.

WHEREFORE, I respectfully request that the Court deny Lucent's motion for summary judgment in its entirety.

Dated: September 18, 2006

By: /s/ Robert R. Thomas
Robert R. Thomas

EXHIBIT A

Luann Gould

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1 A. On August 1st. And there was another
2 employee that was terminated approximately two
3 months after I, same job I was doing, same
4 supervisor. He witnessed him being terminated --
5 well, witnessed him being called to be terminated,
6 let go.

7 Q. Was it also for excessive absenteeism?

8 A. His was more fraud, I would say. And he's
9 now back full time, vice president of the union.
10 And, you know, he witnessed him being walked out,
11 and now he's back. And there's people in the area
12 that have been on level five probation. They're
13 still there.

14 Q. Who, to your knowledge, was at level five
15 and was put on probation and not terminated?

16 A. The union was going to give me a list of
17 everybody that was on level five at the time. I
18 don't know if they'll still provide it to me or not.
19 But I'm sure the company has records. But there was
20 an individual in the department, Brent, I don't know
21 his last name, that was on level five probation.
22 There has been several people in the plant that have
23 been given probation.

24 Q. Do you know to your own knowledge any

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1 than three consecutive calendar days. I have some
2 questions to ask you about this. Not about the
3 form. This is more about the actual time that
4 Shelby was sick or receiving treatment. So I'd like
5 to ask you both about the times in May and also in
6 July. Let's move backwards. We'll start with July.
7 In July, you were off from work on July 7th; is that
8 correct?

9 A. Correct.

10 Q. Is it your testimony today that Shelby was
11 sick or incapacitated for a longer period of time
12 than the single day that you were out on July 7th?

13 A. Yes.

14 Q. Please explain to me, what would that be?

15 A. It started over the July 4th weekend. I
16 believe it was Saturday, either late Friday night or
17 Saturday I noticed her eye was swelling up, didn't
18 know if it was a bug bite or not. It progressively
19 got worse. By Sunday she couldn't open her eye. It
20 was all crusted up. I had to take hot compresses so
21 she could open up her eye. And I knew it wasn't
22 just a bite at that time. That's why on Monday when
23 the doctor's office opened, I had called him up,
24 because she couldn't even open up her eye in the

Luann Gould

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1 morning. And I had called up the doctor's office,
2 and they said they needed to see her so they could
3 see what was wrong and treat it.

4 Q. Okay. Did the doctor prescribe a
5 prescription?

6 A. Yes, she was given an antibiotic. I believe
7 it was two to three times a day she had to have the
8 ointment in her eye. And it was five to seven days
9 of treatment.

10 Q. Did you give her the ointment treatment?

11 A. Yes, I did.

12 Q. How long did that last, approximately?

13 A. I believe it was a week of treatment with
14 ointment.

15 Q. Is the doctor's office open on the weekends?

16 A. No.

17 Q. Do you remember -- this is for the July 4th
18 weekend. Do you remember whether you called the
19 doctor's office or not over the weekend?

20 A. I believe I tried to call, but there was no
21 answer. And there was no -- like sometimes they'll
22 leave an emergency number. I don't believe there
23 was anyone there at the office.

24 Q. So that lead you to call them on Monday,

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1 July 7th?

2 A. Correct.

3 Q. And to schedule an appointment?

4 A. Correct.

5 Q. So just as a mother and a layperson, someone
6 who's not a professional, is it your view that -- I
7 mean, is it clear to you that Shelby was sick for
8 more than three days?

9 A. Absolutely, yes.

10 Q. And those were consecutive days?

11 A. Consecutive days, yes.

12 Q. I'd like to go just back in time to the May
13 chicken pox. Once again, we've talked about how you
14 were out of work for May 5th and 6th. I'm not sure
15 if you were out of work for the 7th or not. Do you
16 recall?

17 A. I don't recall. I believe I returned to
18 work on the 7th of May.

19 Q. Counsel has already reflected that Monday --
20 May 5th was a Monday. So you were out of work on
21 Monday, May 5th and Tuesday the 6th. Was Shelby
22 sick with chicken pox, to your knowledge, prior to
23 your days off from work?

24 A. She had marks on her on her bottom, and they

Luann Gould

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1 were itchy. Then the next morning she woke up,
2 there was more on her. Then by the time I took her
3 on Monday, they had come out more. They were more
4 exposed, and I had taken her on Monday. It started
5 off with a few, and over the two days it got worse.

6 Q. I'd just like to clarify. When did you
7 notice --

8 A. It was on a Saturday.

9 Q. Excuse me, let me ask the question first.
10 When did you notice that Shelby was sick?

11 A. Well, when she told me she was real itchy,
12 and she was having a bath on Saturday, I noticed she
13 had some dots on her bottom. Then as the day got
14 on, it got worse. By Monday, she had several
15 chicken pox come out.

16 Q. When did you go to the doctor in May?

17 A. That Monday, May 5th.

18 Q. Do you remember who you saw specifically,
19 which doctor or which nurse practitioner?

20 A. I want to say it was -- I want to say maybe
21 it was Nicole that went into the room and saw her.

22 Q. If it were Nicole, do you recall whether she
23 prescribed anything for Shelby?

24 A. Well, there's no prescription. You have to

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1 keep them quarantined, and you have to let it run
2 its course. Just to be in a bath. She told me for
3 itchiness, Benadryl. Basically aspirin for the
4 fever. That's the care I gave her. Lots of fluid.

5 Q. Let me refer to Exhibit 9. This is one of
6 the FMLA forms. There are a lot of dates on here.
7 Do you recall when you filled this form out?

8 A. Well, I may have filled it out right here,
9 7/7. This is about the chicken pox?

10 Q. You're referring to the top of the form,
11 page one?

12 A. This is for the conjunctivitis, right?

13 Q. I'm sorry, this is for July, yes.

14 A. Yes, conjunctivitis. I filled that out on
15 the 7th.

16 MR. SPELFOGEL: When you say you filled
17 that out, you're referring to the dates on the upper
18 right, there's -- it says, "I hereby request a leave
19 of absence under the Family Medical Leave Act of
20 1993, parens, FMLA, to begin on 7/7/03 and to
21 continue through," and then it looks like it says
22 7/7/03 and then under it, it says 7/8/03.

23 MR. THOMAS: Crossed out.

24 MR. SPELFOGEL: I'm not certain, the

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1 he said. We're not sure about that at that time.

2 That was 7/10.

3 Q. So just to clarify, your understanding is
4 that the two days pending may have been in reference
5 to the May or the earlier leave time that you
6 requested off?

7 A. Yes.

8 Q. That was still in limbo?

9 A. Correct.

10 Q. Okay, thanks. I'd like to just -- I'm
11 sorry, jump back to Exhibit 14 regarding the May
12 chicken pox. On page one of this, I'd like you to
13 look at number 5A. This is page one of four in the
14 middle. Can you read the handwriting that's filled
15 in? The question is state the approximate date the
16 condition commenced. And then the answer is, can
17 you read that? Can I suggest that --

18 MR. SPELFOGEL: That says lesions.

19 A. Lesions first noticed on 5/3/03 by patient's
20 mother. Is expected to return to normal activities
21 on 5/7/03.

22 Q. To the best of your knowledge, who filled
23 out number 5A?

24 A. That's from Dr. Cammerilla's office.

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1 Q. If you look on page -- on the next page
2 where this continues --

3 A. Nicole.

4 Q. There's a signature. Whose signature is
5 that?

6 A. That's Nicole May.

7 Q. And next to it there is a stamp which has
8 her name?

9 A. Correct.

10 Q. Is that correct?

11 A. Correct.

12 Q. So do you believe or recall that she filled
13 this out for you?

14 A. Yes, because she asked me, you know, when
15 you bring them in, they ask you when you first
16 noticed it.

17 Q. So you would have provided this information
18 to her?

19 A. Correct.

20 Q. And the dates again are from what date?

21 A. 5/3/03 to 5/7/03.

22 Q. So that's more than three calendar days,
23 correct?

24 A. Correct.

Luann Gould

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1 Q. You mentioned at the time you were
2 terminated or told of that on August 1, 2003, there
3 was a meeting; is that correct?

4 A. Yes.

5 Q. Did you bring up the fact in that meeting
6 that you believed that you had vacation time
7 available?

8 A. Yes.

9 Q. Do you remember what you said?

10 A. I said that I had four hours of vacation
11 time. And Steve Sickel said he was aware of that.
12 And that was it.

13 Q. Did you ask him to consider that as a reason
14 not to terminate you?

15 A. Yes, I asked him if they could give me two
16 hours of unpaid excused absence so it would give me
17 the six hours, which I guess by law is -- six hours
18 is considered hours of time worked, so that I
19 wouldn't be triggered as a day.

20 Q. And he didn't listen to your request?

21 MR. SPELFOGEL: Objection.

22 Q. He didn't honor your request?

23 A. No.

24 Q. Did anyone at Lucent in a managerial

Luann Gould

1 capacity or human resources capacity ever tell you¹¹¹
2 that you might be able to use the Small Necessities
3 Leave Act?

4 A. No.

5 Q. To cover some of your absences?

6 A. No.

7 Q. When did you first find out about the SNLA,
8 which is the Small Necessities Leave Act?

9 A. After I was terminated from the company when
10 a union representative asked why I wasn't offered
11 the Small Necessity Leave Act, and the president's
12 response was that the company wanted me fired.

13 Q. Just to clarify your testimony --

14 MR. SPELFOGEL: Objection. Her
15 testimony speaks for itself. You don't have to
16 restate it.

17 MR. THOMAS: Okay, I believe it does.

18 Q. Were you ever told that there was an appeal
19 process to the Lucent Absence Control Plan?

20 A. The grievance you're talking about?
21 Grievance, appeal, same thing.

22 Q. Yes. Why don't you just answer to the best
23 of your ability.

24 A. I was told by the union that there was going

EXHIBIT B

Pyong Deletis

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1 Q. She was on level three?

2 A. Yes.

3 Q. Is it your testimony that you wanted to help
4 her from going to level four?

5 A. Of course.

6 Q. Okay. And Peggy Blumer told you about some
7 documentation that she needed?

8 A. FMLA paper.

9 Q. Did you in fact provide that to Ms. Gould?

10 A. Yes.

11 Q. And then who was your direct supervisor?

12 A. At that time, Steve Sickel was.

13 Q. Did you have any conversations with him
14 about Ms. Gould?

15 A. Yes, I asked him can we help her. And he
16 goes, "well, if she provides the right
17 documentation, that's the only thing, that is up to
18 her that she need to provide documentation to Peggy
19 Blumer."

20 Q. Did you ask anymore questions about what the
21 documentation was that would be necessary?

22 A. According to Peggy, documentation -- first
23 time when she submitted, she got denied. It wasn't
24 enough. It wasn't enough information. So she asked

Pyong Deletis

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1 Q. Do you know who was?

2 A. No.

3 Q. Do you know who told her?

4 A. I was in the room with our direct manager.

5 Q. And that would have been Mr. Sickel?

6 A. Steve Sickel, myself and Brian Ahern and
7 president of the union was in the room.

8 Q. What happened at that conversation?

9 A. We present the paperwork, days that she --
10 it trigger the absence that she took and why it
11 didn't get approved. So she got put into level
12 four, and this day trigger to level seven. And they
13 decide that it's going to be terminated.

14 Q. You said level seven. Did you mean level
15 five?

16 A. Level five, I'm sorry.

17 Q. And were you aware at that time that
18 Ms. Gould had four hours of vacation time unused?

19 A. Yes.

20 Q. So it was really four -- how many days over
21 was she -- how many hours over was she?

22 A. She was over three and a half days -- three
23 days, I believe.

24 Q. If you count the two days in --

Pyong Deletis

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1 A. Uh-hum, uh-hum.

2 Q. Do you remember how many -- do you know how
3 many people there were in December of 2003?

4 A. The same amount of people.

5 Q. When did it go down to one?

6 A. Is recently. Recently it happened, because
7 it was outsourced elsewhere. That's when we move
8 people, personnel around different organizations.

9 Q. Of the -- if you know, of the 15 to 18
10 people that were in the stinger shop in the year
11 2003, do you know how many are still working for
12 Lucent?

13 A. They all do.

14 Q. Except Ms. Gould?

15 A. Yes.

16 Q. Were any of them ever laid off?

17 A. Not recently, no. Not since then to today,
18 no.

19 Q. From 2003 until 2006?

20 A. No.

21 Q. The same 15 people --

22 A. Group of people still there.

23 Q. Still there?

24 A. Yeah.

Pyong Deletis

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1 A. Yes, I am.

2 Q. Do you know what the SNLA is?

3 A. I think that's versus FMLA, I think
4 something smaller. But it's smaller.

5 Q. When did you first learn about the SNLA?

6 A. That's always exist, but I -- it's not
7 that -- FMLA is the one that we use. We don't -- I
8 don't remember using --

9 Q. SNLA?

10 A. Yeah.

11 Q. Do you ever remember asking Luann Gould if
12 she wanted to utilize the SNLA?

13 A. No, I don't remember.

14 Q. Have you ever had anyone ask you to utilize
15 the SNLA?

16 A. I don't, no.

17 Q. Do you know what it's for, SNLA?

18 A. It's something similar to FMLA, but I'm not
19 sure.

20 Q. Okay, fair enough. To your knowledge, how
21 many union workers have been recalled by Lucent
22 since 2003, if you know?

23 A. I don't know.

24 Q. Do you know if any have been?

Pyong Deletis

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1 argue the law. You're asking her for some factual
2 questions --

3 MS. HARVEY: I'm asking her from a
4 factual point of view.

5 Q. Do you think that the reasons were valid for
6 her to be terminated?

7 MR. SPELFOGEL: When you say reasons, I
8 don't understand what you're talking about. That
9 she moved from level three to four to five, did she
10 exceed factually? Did she exceed the number of days
11 to move? Did she exceed the number of days?

12 MS. HARVEY: That's not what I'm asking.

13 MR. SPELFOGEL: You mean, was it the
14 right call?

15 Q. From a management point of view, you as a
16 manager -- I'll rephrase the question a couple of
17 different ways.

18 Were there any other reasons that Luann
19 was terminated, other than her absences?

20 A. My personal point? She abuse our system.

21 Q. How did she abuse your system?

22 A. Because she knows that we have so many days
23 we allowed. She have a child who needs her care.
24 So if you plan your days accordingly, there's more

Pyong Deletis

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1 were going to announce that she was on level five
2 and terminated?

3 A. I believe it's the board, ACP board.

4 Q. Did you get a letter from them saying that
5 you're -- how did you know what to do that day?

6 A. Our manager will call us.

7 Q. Mr. Sickel?

8 A. Yes.

9 Q. Do you remember what he said?

10 A. He says, "We are meeting with Luann, and we
11 need you to be in the office and bring her folders
12 and everything."

13 Q. Did you know before Luann -- before you went
14 into that meeting that she was going to be fired?

15 A. No. We know she's going on level five,
16 because she didn't get approved FMLA.

17 Q. But did you think she had a chance of being
18 on probation?

19 A. Chance, it could have been anybody.

20 Q. Were you ever asked if she should be on
21 probation?

22 A. No.

23 Q. Did you think she should have been put on
24 probation?

Pyong Deletis

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1 A. I never thought about it.

2 Q. But you did think she abused the system?

3 A. Yes, I did, yeah.

4 Q. Did she abuse the system in any other way,
5 other than being absent?

6 A. She's not a best worker.

7 Q. Did she abuse the system in any other way,
8 other than being absent?

9 A. No.

10 Q. Was she a good worker?

11 A. No.

12 Q. She was not a good worker?

13 A. No.

14 Q. What were her reviews like?

15 A. Her review? I haven't given her a review.

16 I never had opportunity to give her any kind of
17 review.

18 Q. Did you ever -- well, you observed her,
19 correct?

20 A. Yeah.

21 Q. And you did not think she was good?

22 A. I don't think she was very good worker, no.

23 Q. Why wasn't she a good worker?

24 A. Because she's never at her position. I need

Pyong Deletis

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1 to speak to her. I need to get this done, this
2 done, this done. She's never pro-active.

3 Q. How many times did you have to speak to her?

4 A. I don't recall.

5 Q. Every day?

6 A. Not every day. I can't just watch one
7 person. I mean, I don't manage one person. I
8 manage a whole group.

9 Q. In the course of a week, how many times did
10 you have to tell her to go to her position?

11 A. For instance, she was doing ESD.

12 Q. Could you just explain what that is?

13 A. It's electronic -- electricity static
14 discharge. And we have to be grounded, all of us,
15 to touch the circuit packs and stuff. So she go
16 around and check everyone's wrist strap. It roughly
17 takes maybe 20 minutes to do entire 12 people. It
18 doesn't take long. She would spend like two hours
19 to do that, because she would like to talk. I mean,
20 it's okay if we're not terribly busy. It's not
21 okay, but you can overlook.

22 Q. Did you ever give her a verbal warning for
23 that?

24 A. No, I ask her let's get it done so we can go

Pyong Deletis

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1 to the next operation.

2 Q. Did you ever go to her steward and say,
3 "Hey, I'm not happy with what she's doing"?

4 A. No.

5 Q. But you didn't think she was a good worker?

6 A. No.

7 Q. Did she ever take an extra long lunch?

8 A. Yes.

9 Q. Was that ever reported?

10 A. I'm not sure.

11 Q. When did you notice she wasn't a good
12 worker?

13 A. She only worked for me two month directly.

14 Q. Was it the first week you noticed that she
15 wasn't good?

16 A. I didn't say she wasn't good. I say she
17 wasn't --

18 Q. I asked you if she was a good worker, and
19 you said no.

20 A. She's not a very good worker, no.

21 Q. Well, when did you notice -- how was her
22 work the first week?

23 A. First week was okay.

24 Q. What about the second week?

Pyong Deletis

1 A. Second week she start leaving the work areas 56
2 a half an hour at a time, and it wasn't break time,
3 it wasn't lunch time.

4 Q. Did anybody else in the department ever
5 leave his or her area?

6 A. Not long period of time, no.

7 Q. She was the only one out of 15 to 18 people
8 that did?

9 A. If employee come to me and say look, I need
10 to go to this place, cafeteria, I need to go speak
11 to union steward, I need to go -- that's okay. But
12 you don't just leave and leave for half an hour, 45
13 minutes.

14 Q. How long was the longest time she'd leave?

15 A. I don't remember.

16 Q. Did you ever talk to anybody about that?

17 A. I spoke to Luann.

18 Q. Did you ever speak to Brian Ahern about
19 that?

20 A. No.

21 Q. Did you ever speak to Mr. Sickler?

22 A. No.

23 MR. SPELFOGEL: Sickel, I think.

24 MS. HARVEY: Sickel, sorry. I have no